

# **CHAPTER 3**

## **BASIC STATUTES AND REGULATIONS**

## FAC 97-01 OCTOBER 21, 1997

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

<i>Sec.</i>		1.602-2	Responsibilities.
1.000	Scope of part.	1.602-3	Ratification of unauthorized commitments.
		1.603	Selection, appointment, and termination of appointment.
	<b>Subpart 1.1—Purpose, Authority, Issuance</b>	1.603-1	General.
1.101	Purpose.	1.603-2	Selection.
1.102	Statement of guiding principles for the Federal Acquisition System.	1.603-3	Appointment.
1.102-1	Discussion.	1.603-4	Termination.
1.102-2	Performance standards.		
1.102-3	Acquisition Team.		<b>Subpart 1.7—Determinations and Findings</b>
1.102-4	Role of the Acquisition Team.	1.700	Scope of subpart.
1.103	Authority.	1.701	Definition.
1.104	Applicability.	1.702	General.
1.105	Issuance.	1.703	Class determinations and findings.
1.105-1	Publication and code arrangement.	1.704	Content.
1.105-2	Arrangement of regulations.	1.705	Supersession and modification.
1.105-3	Copies.	1.706	Expiration.
1.106	OMB Approval Under the Paperwork Reduction Act.	1.707	Signatory authority.
1.107	Certifications.		
	<b>Subpart 1.2—Administration</b>		
1.201	Maintenance of the FAR.		
1.201-1	The two councils.		
1.201-2	FAR Secretariat.		
1.202	Agency compliance with the FAR.		
	<b>Subpart 1.3—Agency Acquisition Regulations</b>		
1.301	Policy.		
1.302	Limitations.		
1.303	Publication and codification.		
1.304	Agency control and compliance procedures.		
	<b>Subpart 1.4—Deviations from the FAR</b>		
1.400	Scope of subpart.		
1.401	Definition.		
1.402	Policy.		
1.403	Individual deviations.		
1.404	Class deviations.		
1.405	Deviations pertaining to treaties and executive agreements.		
	<b>Subpart 1.5—Agency and Public Participation</b>		
1.501	Solicitation of agency and public views.		
1.501-1	Definition.		
1.501-2	Opportunity for public comments.		
1.501-3	Exceptions.		
1.502	Unsolicited proposed revisions.		
1.503	Public meetings.		
	<b>Subpart 1.6—Career Development, Contracting Authority, and Responsibilities</b>		
1.601	General.		
1.602	Contracting officers.		
1.602-1	Authority.		

**1.000 Scope of part.**

This part sets forth basic policies and general information about the Federal Acquisition Regulations System including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation. Subparts 1.2, 1.3, and 1.4 prescribe administrative procedures for maintaining the FAR System.

**Subpart 1.1—Purpose, Authority, Issuance****1.101 Purpose.**

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).

**1.102 Statement of guiding principles for the Federal Acquisition System.**

(a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

(b) The Federal Acquisition System will—

### **Learning Objectives**

- 3-1 Identify and describe the four principal sources of Federal Contract Law.
- 3-2 Identify the basic statutes that control the fundamentals of purchasing and contracting.
- 3-3 Describe the FAR system, including
  - Sources.
  - Maintenance.
  - Supplements.
  - Usage.

*Exhibit 3-2. Learning Objectives.*

## **CHAPTER INTRODUCTION**

On the previous page is a copy of the first page of the Federal Acquisition Regulation (FAR). All personnel involved in procurement are required to follow those regulations. This chapter focuses on the Federal Acquisition Regulations System and how it is used.

The Government's ability to procure supplies and services rests upon law and is limited by law. There are literally hundreds of statutes and thousands of pages of regulations that control or affect the process. No one training course can effectively cover all of that material, and no one person knows or is capable of knowing all of the statutes and regulations. In fact, not every regulation or statute applies to every individual acquisition.

These laws are necessary in part because of the unique status of the Government. The Government is a sovereign body, or body supreme. As such, it has special powers and immunities. These give it certain advantages in the making of contracts but also impose unique limitations on its contractual authority

## 3.1 THE SOURCES OF FEDERAL CONTRACT LAW

There are four sources of Federal contract law:

- The Constitution.
- Statutes.
- Administrative Law.
- Common Law.

### 3.1.1 The Constitution

The Constitution of the United States is the supreme law of the land. It does not, however, specifically address whether the Government has the right to enter into contracts. It was not until 1831 that the Supreme Court, in a “landmark” decision (United States versus Tingey), declared that the Federal Government has:

- **Inherent power**, based on sovereignty, to enter into contracts, and
- **Implied powers**, as necessary, for the proper performance of its duties.

The Court also stated guidelines to apply to determine the **validity** of a Government contract:

- Is the Government authorized to act?
- Is the act performed by someone having the authority to act?

Both of these must be answered in the affirmative and both apply today.

### 3.1.2 Statutes

A statute is a law enacted by the legislative branch of Government and signed by the President. The statute is identified by its public law number. For example, Public Law 93-400 is the Office of Federal Procurement Policy Act (OFPP), enacted in 1974. The various sections of a public law are later included in the appropriate U.S. Code or Codes. Part of the P.L. 93-420 has been “codified” at 41 U.S.C. 401 (see Chapter 1). The OFPP Act has been amended by several laws, such as the “Office of Federal Procurement Policy Act Amendments of 1983” (P.L. 98-191) and the “Office of Federal Procurement Policy Act Amendments of 1988” (P.L. 100-679).

## BASIC STATUTES AND REGULATIONS

Section 3.2 summarizes the legislative history of statutes that govern the Federal acquisition system and identifies some of the most important statutes.

### 3.1.3 Administrative Law

Administrative law provides the third basic source of Federal Contract Law. Sources of administrative law include:

- Executive Orders signed by the President.
- Rules and regulations.
- Decisions by the Comptroller General and administrative law judges.

**Executive Orders** Executive Orders (EO) establish policies to be followed by the executive agencies. EOs stay in effect unless rescinded by the signing President or a successor President. Exhibit 3-3 lists some of the most important EOs, in terms of direct impact on the Federal Acquisition System.

KEY EXECUTIVE ORDERS	
<b>E.O. 10582</b>	<p>“Prescribing Uniform Procedures for Certain Determinations under the Buy-American Act”, December 17, 1954 (as amended).</p> <p>Establishes Governmentwide rules for determining when, under the “Buy-American” Act, Federal departments and agencies may purchase materials of foreign origin for public use within the U.S.</p>
<b>E.O. 11246</b>	<p>“Equal Employment Opportunity”, September 24, 1962 (as amended).</p> <p>Requires contractors to agree not to discriminate on the basis of race, color, religion, sex, or national origin in their employment practices.</p>
<b>E.O. 11141</b>	<p>“Declaring a Public Policy Against Discrimination on the Basis of Age”, February 12, 1964.</p> <p>Precludes contractors and subcontractors engaged in the performance of public contracts from discriminating on the basis of age in their employment practices.</p>

*Exhibit 3-3. Key Executive Orders*

<b>KEY EXECUTIVE ORDERS (CONTINUED)</b>	
<b>E.O. 11701</b>	<p>“Employment of Veterans by Federal Agencies and Government Contractors and Subcontractors”, January 24, 1973.</p> <p>Provides direction to the Department of Labor and the heads of executive agencies with respect to the employment of veterans.</p>
<b>E.O. 11738</b>	<p>“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans,” September 10, 1973.</p> <p>Prohibits contracting for goods, materials, or services which would be performed in whole or in part in a facility that has been designated by EPA as being in violation of environmental laws.</p>
<b>E.O. 12138</b>	<p>“Creating a National Women’s Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women’s Business Enterprise,” May 18, 1979.</p> <p>Encourages the awarding of subcontracts under Federal prime contracts to women-owned enterprises.</p>
<b>E.O. 12352 &amp; 12931</b>	<p>“Federal Procurement Reform”, March 17, 1982 and October 13, 1994. (E.O. 12931 supercedes E.O. 12352.)</p> <p>Directs the head of each executive agency to designate a Procurement Executive with agency-wide responsibility to:</p> <ul style="list-style-type: none"> <li>• Oversee the agency's procurement goals and guidelines.</li> <li>• Measure and evaluate procurement office performance against stated goals.</li> <li>• Enhance career development of the workforce.</li> <li>• Advise agency heads on whether goals are being achieved.</li> </ul> <p>Prescribes other measures to streamline procurement systems and ensure that procurement organizations focus (a) on measurable results and (b) meeting customer needs. Further directs agency heads to establish career education programs for procurement professionals, including requirements for successful completion of educational requirements or mandatory training for entry level positions and for promotion to high level positions.</p>

*Exhibit 3-3. Key Executive Orders*

<b>KEY EXECUTIVE ORDERS (CONTINUED)</b>	
<b>E.O. 12352 &amp; 12931</b> <i>(Continued)</i>	<p>Directs the OFPP Administrator to work with the OMB Director and agency heads to provide broad policy guidance and overall leadership for procurement reform, including such tasks as coordinating Governmentwide efforts, identifying desirable Governmentwide procurement system criteria, streamlining agency-level guidance for procurement processes, and recommending changes in applicable laws.</p>
<b>E.O. 12448</b>	<p>“Exercise of Authority Under Section 218 of Title 18, United States Code”, November 4, 1983.</p> <p>Authorizes Federal agencies to promulgate regulations for voiding or rescinding contracts obtained through bribery, graft or conflict of interest.</p>
<b>E.O. 12954</b>	<p>“Ensuring The Economical And Efficient Administration And Completion Of Federal Government Contracts,” March 8, 1995.</p> <p>Restricts contracting with firms that permanently replace lawfully striking employees.</p>
<b>E.O. 12969</b>	<p>“Federal Acquisition And Community Right-To-Know”, August 8, 1995.</p> <p>Requires contractors under certain conditions to file Toxic Chemical Release Forms (“Form R”) for each toxic chemical manufactured, processed, or otherwise used by the Federal contractor at indicated facilities.</p>
<b>E.O. 12979</b>	<p>“Agency Procurement Protests”, October 25, 1995.</p> <p>Encourages offerors (i.e., firms that submit bids, proposals, or quotes) to submit protests to the procuring agency rather than to the GAO or to the courts. When the protester alleges that the Contracting Officer violated a statute or regulation and thereby caused prejudice to the protester, the protest must go to an agency official at a level above the contracting officer. The order further (1) directs (with some exceptions) withholding of award while a timely filed protest is pending and (2) permits and encourages use of alternative dispute resolution techniques and third party neutrals.</p>

*Exhibit 3-3. Key Executive Orders*

<b>KEY EXECUTIVE ORDERS (CONTINUED)</b>	
<b>E.O. 12989</b>	<p>“Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions”, February 13, 1996.</p> <p>Authorizes the heads of contracting activities to debar a contractor when the Attorney General determines that the contractor is not in compliance with the INA employment provisions.</p>
<b>E.O. 13011</b>	<p>“Federal Information Technology”, July 17, 1996.</p> <p>Establishes policies and procedures for determining information technology requirements and acquiring such technology.</p>
<b>E.O. 12843</b>	“Procurement Requirements And Policies For Federal Agencies For Ozone-Depleting Substances”, April 21, 1993.
<b>EO. 12902</b>	“Energy Efficiency And Water Conservation At Federal Facilities”, March 8, 1994.
<b>EO. 13301</b>	“Federal Alternative Fueled Vehicle Leadership”, December 13, 1996
<b>E.O. 13101</b>	<p>“Greening The Government Through Waste Prevention, Recycling, And Federal Acquisition”, September 14, 1998</p> <p>Establish environmental factors and considerations for requirements documents and source selection plans.</p>

*Exhibit 3-3. Key Executive Orders***Rules and Regulations**

Agency heads are empowered by statute or by Presidential order to prepare and issue **rules and regulations**. The Government is required under the Administrative Procedures Act to publish most, but not all, such rules and regulations in both of the following publications.

**The Federal Register (FR)**

The FR is a daily Government publication. It provides a uniform system for making regulations and legal notices issued by Federal agencies available to the public. Proposed rules are published so that the public can comment on them. After comments are received and evaluated, final rules are published. Some rules are based on statute and some on policies flowing from OMB, OFPP, the agencies, etc.



## BASIC STATUTES AND REGULATIONS

### Code of Federal Regulations (CFR)

The CFR codifies the rules (published in the Federal Register) concerning the executive departments and agencies of the Federal Government. The CFR is organized as indicated below:

- The CFR is divided into 50 **titles**. Each title represents broad areas subject to regulation by the Federal Government.
- Each title is divided into **chapters**. Each chapter usually bears the name of the issuing agency and is further subdivided into parts covering specific regulatory areas.

A number of rules and regulations apply to the Federal acquisition system and have Governmentwide force and effect. These are summarized in Exhibit 3-4.

<b>RULES AND REGULATIONS THAT APPLY TO FEDERAL PROCUREMENT</b>		
<i>Title</i>	<i>CFR§</i>	<i>Coverage</i>
OFPP Policy Letters	N/A	Establish Governmentwide policies for acquiring supplies and services.
Federal Acquisition Regulation (FAR)	48 CFR Chapter 1	Establishes Governmentwide rules and regulations that apply generally to the acquisition of supplies and services (see section 3.3 of this chapter).
FAR Supplements	48 CFR Chapters 2 - 63	Establish rules and regulations that apply generally to the acquisition of supplies and services within the issuing Federal department or agency.
Cost Accounting Standards (CAS)	48 CFR Chapter 99	Establish standards for the cost accounting practices of certain contractors and subcontractors, along with procedures for (a) disclosing those practices to the Government and (b) determining the cost impact of any changes necessary to comply with the standards or that are otherwise contemplated by the contractor.
Small Business Administration (SBA)	13 CFR	Establishes rules for socioeconomic objectives and related programs under its cognizance, such as the small business set-aside program.

*Exhibit 3-4. Key Regulations*

<b>RULES AND REGULATIONS THAT APPLY TO FEDERAL PROCUREMENT (CONTINUED)</b>		
<i>Title</i>	<i>CFR§</i>	<i>Coverage</i>
Labor	48 CFR Chapter 99	Establishes rules for socioeconomic objectives and related programs under its cognizance, such as the Fair Labor Standards Act.
Federal Property Management Regulations (FPMR)	41 CFR Chapter 101	Prescribe additional Governmentwide rules for: <ul style="list-style-type: none"> <li>• Determining the method of supply.</li> <li>• Interagency purchases.</li> <li>• Purchase vs. lease determinations.</li> <li>• Acquiring supplies and services from GSA and other interagency supply sources.</li> <li>• Inventory management.</li> <li>• Storage and distribution.</li> <li>• Federal product descriptions (e.g., Federal Specifications, CIDs, etc.).</li> <li>• Inspection and quality control.</li> <li>• Acquiring public utilities.</li> <li>• Acquiring real property.</li> </ul>

*Exhibit 3-4. Key Regulations*

#### Administrative Law Decisions

Under several statutes (most notably the Disputes Act and the Competition in Contracting Act), administrative forums have been established to hear and decide claims, protests, and other questions involving the interpretation of contracts and Federal laws, rules, and regulations that apply to contracts. Among others, these include Boards of Contract Appeals and the General Accounting Office.

#### Boards of Contract Appeals (BCAs)

BCAs render decisions on disputes arising under contracts. If there is a disagreement between a contractor and an agency as to a contractual requirement or the meaning of a contract, the contractor will ask the CO for a final decision. If the contractor is not satisfied by the decision, an appeal

## BASIC STATUTES AND REGULATIONS

is filed by the contractor with the appropriate BCA under the “Disputes” clause of the contract.

The Comptroller General (Comp. Gen.)

The Comptroller General of the General Accounting Office prepares recommendations on protests for consideration by the agency. These recommendations are published as “Comptroller General Decisions.” The Comptroller General's recommendations on protests often function as “precedents” for interpreting statutes and other types of law.

### 3.1.4 Common Law

The final source of Federal Contract Law includes decisions handed down by judges in courts of law and the application of “common” law. Today, the courts are a more important source of contract law in the private sector than in the Federal sector. This is because the Disputes Act and other such laws have established administrative procedures and forums for deciding protests of Federal contract award and claims arising under or related to a Federal contract. However, when the courts agree to hear a case and decide that the case involves issues within their jurisdiction, the courts nonetheless can override administrative law judges or the Comptroller General and establish binding precedents.

## 3.2 BASIC STATUTES

This section conveys a brief history of Federal acquisition, an overview of the statutes that presently define and control the Federal acquisition system, and reviews of the more critical statutes.

### 3.2.1 Legislative History of Federal Acquisition

Evolution

Writers and lecturers sometimes refer to an “early contract” to illustrate what contracting was like in the “old days.” They will refer to a two page Government contract between the Army and the Wright brothers to develop an airplane for military use. Similarly, an early example of contract administration requirements is reflected in a letter “dispatching” a Navy captain to Philadelphia to make sure the company building a naval vessel “accomplished the work in good order.” You will see in a later chapter that contract administration is now much more complex.

The evolution from simple, short contracts and contracting procedures to the complex, lengthy contracts and processes encountered today began

with World War II. This war was a milestone event that brought about significant changes in the Federal acquisition system.

Pre-World War II

From the late 1700s until the 1940s, the Department of the Treasury was responsible for the procurement of supplies and services for the U.S. Government. In addition, the Department of War and the Department of the Navy were authorized to contract for goods and services for military use. In the early years of our Government, there were few controls on contracting, and favoritism soon became a problem. In 1809, Congress established the requirement for competition in Government procurement. Congress enacted legislation that required all purchases and contracts for supplies and services to be made by either:

- Open purchasing.
- Advertising for offers.

Exhibit 3-5 defines these terms.

TERMS USED TO DESCRIBE COMPETITION	
Open Purchasing	<ul style="list-style-type: none"> <li>• Going to the open market</li> <li>• Buying from merchants at the established or prevailing market price.</li> </ul>
Advertising for Offers	<ul style="list-style-type: none"> <li>• Publicly advertising a Government requirement.</li> <li>• Requesting interested parties to respond by submitting offers.</li> </ul>

*Exhibit 3-5. Terms Used to Describe Competition*

The 1809 legislation was the first attempt to avoid favoritism by requiring competition. However, more controls would be needed. In subsequent years, the Federal Government repeatedly faced procurement scandals brought about by undisclosed purchases made at inflated prices. In fact, it was found that some members of Congress had benefited by obtaining Government contracts for their friends.

## BASIC STATUTES AND REGULATIONS

Congress responded by passing the Civil Sundry and Appropriations Act of 1861, which, as amended, is referred to as Revised Statute (R.S.) 3709: This was the primary law controlling Government contracting until the 1940s. This act required:

- Open solicitation of sealed bids.
- Public opening of bids received.
- Contract award to be made to the low bidder.

The three-part process became known as “formal advertising” and was referred to by that name until 1985, when the Competition in Contracting Act (CICA) formally renamed it “sealed bidding.”

R.S. 3709 did provide the following exceptions to the above requirements:

- Personal services.
- Public exigencies (urgencies).
- Small purchases.

There were few changes to Government contracting regulation for a number of years. Then, in the early 1900s (particularly the 1930s), socioeconomic laws, including the Buy American Act, and several laws that are beneficial to labor, were added to contracting regulations.

### World War II

In 1941, Congress enacted the first War Powers Act. Where necessary to facilitate prosecution of the war, the Act permitted the President to authorize certain departments and agencies to make procurements with no contract law requirements concerning the making, performing, amending or modifying contracts (e.g., without regard to requirements for formal advertising). Thus, the procurement of supplies, material, and equipment for the defense effort approximated the freedom to bargain, a custom enjoyed in the private sector.

While procurement in time of war initiated the use of the most expedient purchase methods, World War II also brought about an era of technological advancements. This meant, for example, moving away from “inventory replenishment” and toward the introduction of new equipment and new supplies. Formal advertising procedures were not appropriate for these such procurements.

### Post-World War II

At the end of the war, it was apparent that agencies concerned with war-time procurement demonstrated the ability to use judgment, discretion, and sound business sense under the broad procurement powers granted them during the war. In keeping with this development, legislation was

proposed in Congress to authorize negotiated procurements on an “exception” basis.

Some of the exceptions that permitted negotiations were:

- National emergency.
- Public exigency (urgency).
- Experimental, developmental, and research work.
- Food (perishable or nonperishable subsistence supplies).

Concurrently, the size and scope of procurement had radically changed. The armed services, even post-war, were spending many times more dollars than were spent by all of Government in pre-war years. Therefore, for the first time, Congress decided to pass comprehensive procurement legislation that would provide for contracting by negotiation.

In 1947, the Armed Services Procurement Act (ASPA) (Title 10 of the U.S. Code, starting at Section 2301) established authority for the Department of Defense to:

- Contract for the acquisition of property and services needed for the national defense.
- Write regulations to implement this act.

The DoD implemented the Act by issuing the “Armed Services Procurement Regulation” (ASPR), subsequently renamed the “Defense Acquisition Regulation” (DAR). The DAR and associated regulations favored contracting by formal advertising, but permitted Contracting Officers in Defense agencies to negotiate contracts under one or more of 17 exceptions to the requirement for formal advertising.

Both the Congress and the executive branches quickly recognized that procurement was also a “growing business” for the civilian agencies. In 1949, Congress enacted the Federal Property and Administrative Services Act (FPASA), codified primarily in Title 41 (some in Title 40) of the U.S. Code. FPASA established the General Services Administration, instead of the Department of the Treasury, as the agency primarily responsible for acquisition, supply, and construction, and for disposal of materials and equipment for civilian agencies. The FPASA allowed Contracting Officers in civilian agencies to negotiate contracts if any one of 15 exceptions applied to the acquisition. Pursuant to the FPASA, GSA prepared and issued the Federal Procurement Regulation (FPR), which applied to civilian agencies.

Although some socioeconomic regulations became effective in the early 1900s, none had a significant impact on contracting procedures. However,

## BASIC STATUTES AND REGULATIONS

in 1950, the Small Business Act was passed. In 1978, Public Law 95-507 made extensive changes to the Small Business Act. Since then, numerous statutes have included changes to the Act.

The Office of Federal Procurement Policy (OFPP) Act was passed in 1974. This Act created OFPP and made it a part of the Office of Management and Budget. There have been several amendments to the Act which have strengthened its role as the central organization in the executive branch for the Federal acquisition system. These were noted in Chapter 2.

### 3.2.2 Basic Statutes

The following four statutes govern the Federal acquisition process. They are listed here with references to locations in the United States Code (U.S.C.) in which their provisions have predominantly been codified.

<b>Act</b>	<b>Acquisition-Related Provisions</b>
Armed Services Procurement Act	10 U.S.C. §2301 et. seq.
Federal Property and Administrative Services Act	41 U.S.C. §201 et. seq.
Office of Federal Procurement Policy Act	41 U.S.C. §401 et. seq.
Small Business Act	15 U.S.C. §631 et. seq.

These statutes are frequently amended. Normally, you will not deal directly with the language of these statutes but rather with the FAR provisions that implement them.

In addition to the four statutes mentioned above, there are nearly 500 other statutes that apply to one or more aspects of Federal procurement. Exhibit 3-6 summarizes some of the better known of these statutes. Except where noted, the names of these acts are taken from title 50, United States Code, "Acts Cited By Popular Name." In that table, you will find both the name of the act and the identity of sections in the United States Code in which the act's provisions have been codified.

<b>ACQUISITION-RELATED STATUTES</b>	
An Act Concerning Public Contracts (1808, 2 Stat. 484)*	Prohibits members of Congress from benefiting from Government contracts.
Anti-Deficiency Act (1906)	Prohibits commitments unless funding is available. Provides for personal liability.
Anti-Kickback Act (1934)	Prohibits “pay-offs” to get a Government contract.
Assignment of Claims Act (1940)	Provides a basis for contractors to obtain loans from private sector lenders against future contract payments, with authorization for the Government to make such payments directly to the lending institution.
Authorization and Appropriations Acts (various)*	Often serve as vehicles for amending basic procurement statutes to prescribe new or amended policies and procedures. For example, an appropriations act in 1861 (12 Stat. 220) forbids the making of a contract unless authorized by law or under an appropriation adequate to its fulfillment. An appropriations act in 1868 (15 Stat. 177) states that no contract may bind the Government to pay an amount in excess of that appropriated. These requirements are still in force today and have been codified as sections 11 and 12 of title 41, United States Code.
Buy American Act (1933)	Provides preference for domestic over foreign materials when acquiring supplies for the Government (but see “Trade Agreements Acts”).
Cargo Preference Act (1954)	Requires shipment of all military and at least half of other goods in U.S. vessels.
Clean Air Act Amendments (1970)	Prohibits contracting with a company convicted of criminal violation of air pollution standards.
Clinger-Cohen Act of 1996 (also known as the Federal Acquisition Reform Act)	Authorizes contracting officers to limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria. Permits excluded offerors to request pre-award debriefings and encourages use of alternative dispute resolution techniques for any protest based on such exclusion. Also revises exceptions to requirements for certified cost or pricing data and prescribes other reforms.

*Exhibit 3-6. Acquisition-Related Statutes*

\*Titles that do not appear in Title 50, United States Code, among the “Acts Cited by Popular Name”.



<b>ACQUISITION-RELATED STATUTES (CONTINUED)</b>	
Competition in Contract Act (1984)	Makes “full and open” competition an underlying objective in procurement. Establishes Competition Advocates at high, responsible levels in every agency, with authority, in some instances, to disapprove proposed procurements that would not achieve “full and open competition.” Imposes strict limits on the use of “sole source” procurements.
Contract Disputes Act (1978)	Establishes a procedure and forums for resolving claims arising under or related to a contract.
Crimes and Criminal Procedures Act (1948)	Requires mandatory purchase of specific supplies from Federal Prison Industries, Inc.
Davis-Bacon Act (1931)	Imposes minimum wages, benefits, and working conditions on construction contracts.
Defense Production Act (1970)	Established a Cost Accounting Standards Board and authorized the promulgation of cost accounting standards that apply to certain Federal contracts and contractors. Authority for the Cost Accounting Standards Board now rests in the OFPP Act, as amended (P.L. 100-679).
Federal Acquisition Streamlining Act (1994)	Establishes policies and procedures for acquiring “commercial” items, authorizes task order contracting, establishes “simplified acquisition procedures” (in place of the prior “small purchase” procedures) for contracts at or under \$100,000, promotes electronic commerce (e.g., FACNET), and otherwise streamlines the acquisition process.
Freedom of Information Act (1966)	Provides for making certain information on Government activities, including acquisition-related activities, available to the public.
Miller Act (1935)	Requires contractors to provide payment and performance bonds on Government construction contracts.
Patents Act (1980)	Defines patent rights with respect to inventions made with Federal assistance, in terms of the conditions under which a small business or non-profit entity may elect to retain title to the invention and limits on that right (e.g., royalty free use of the invention by the Government and “march-in” rights).
Program Fraud Civil Remedies Act (1986)	Strengthens ability of Government to prosecute contract-related fraud.

*Exhibit 3-6. Acquisition-Related Statutes*

<b>ACQUISITION-RELATED STATUTES (CONTINUED)</b>	
Prompt Payment Act (1982)	Assists contractors, especially small businesses, in obtaining timely payment for contract work.
Service Contract Act (1965)	For covered service contracts over \$2,500, mandates clauses on minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates.
Trade Agreements Act (1979)	Waiver of the Buy American Act for certain supply contracts.
Truth in Negotiations Act (1962)	Requires offerors or contractors to submit accurate, complete, and current cost or pricing data and to certify the data.
Tucker Act (Claims) (1887)	Provides authority for the claims court to render judgements on claims against the United States.
Wagner-O'Day Act (1938)	Requires purchase of products made by blind and other handicapped persons.
Walsh-Healy Public Contracts Act (1936)	Prescribes minimum wage, hours, age, and working conditions for supply contracts.
Work Hours and Safety Act (1962)	Prescribes minimum wage, hours, age, and working conditions for laborers and mechanics.

*Exhibit 3-6. Acquisition-Related Statutes*

<b>MILESTONES IN THE DEVELOPMENT OF FEDERAL ACQUISITION POLICIES</b>	
1700s – 1940s	Department of Treasury is responsible for procurement.
1809	Congress requires competition.
1861	Congress requires formal advertising (sealed bidding).
1941	War Powers Act permits purchasing without restraint.
1947	DoD authorized to procure property and services for national defense.
1949	GSA made responsible for policies governing civilian acquisition.
1950	Small Business Act
1974	Congress establishes the Office of Federal Procurement Policy (OFPP)
1985	The Competition in Contracting Act (CICA) makes “full and open” competition a principal objective for Federal procurement.
1994 – 1996	The Federal Acquisition Streamlining Act and the Clinger-Cohen Act direct major changes in policies and procedures, especially with respect to commercial items, acquisitions at or below the “simplified acquisition threshold”, and task order contract.

*Exhibit 3-7. Milestones In The Development Of Federal Acquisition Policies*

### 3.2.3 Small Business Act

**Impact** As noted in Chapter 1, many statutes establish social and economic requirements and goals for Federal acquisitions. The Small Business Act, as amended, is generally considered to be the most “active” socioeconomic statute because it requires both parties to take specific action; i.e., the Government in the award of contracts, and the prime contractor in the award of subcontracts.

**Actions Required By the Government** Under policies pursuant to the Act, the Government is required to establish within each agency an Office of Small and Disadvantaged Business Utilization. Working with the small business specialists from that office and procurement center representatives of the Small Business Administration assigned to their agency, contracting officers are required to afford small business concerns an equitable opportunity to compete for contracts (when appropriate or practicable) through such means as :

- Dividing proposed acquisitions into reasonably small lots to permit offers on quantities less than the total requirement.

## CHAPTER 3

- Planning acquisitions so that more than one small business concern may perform the work within the surety amounts guaranteed by the Small Business Administration (SBA).
- Establishing reasonable delivery schedules so that small business concerns will be encouraged to compete.
- Encouraging prime contractors to subcontract with small business concerns.
- Reserving contracts at or below the simplified acquisition threshold (SAT) for small business concerns.
- Setting selected acquisitions aside (totally or partially) above the SAT for exclusive competition among small business concerns.
- Referring a CO's determination of a contractor's nonresponsibility to the SBA for a decision if the firm found to be nonresponsible is a small business concern.
- Establishing dollar goals for awarding contracts to small, small disadvantaged, HUBZone small, and women-owned small business concerns.
- Requiring, at certain dollar thresholds, the offeror in line for the award of a prime contract to develop plans for placing subcontracts with to small, small disadvantaged, and women-owned small business concerns.
- Awarding contracts to small, minority-owned, business concerns (known as "8(a)" contractors because the requirement is in Section 8(a) of the Small Business Act).

### Actions Required By Contractors

The Act requires contractors to

- Comply with any requirements in the contract for considering small business concerns (especially those concerns that are women-owned or disadvantaged) in awarding subcontracts (see FAR clause 52.219-8).
- When required, implement the subcontracting plan submitted when competing for the contract (see FAR 52.219-9).

### **3.3 THE FEDERAL ACQUISITION REGULATIONS SYSTEM**

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The system consists of the:

- Federal Acquisition Regulation (FAR).
- Agency acquisition regulations that implement or supplement the FAR.

The FAR System does not include internal agency guidance that an agency head is authorized to issue. This type of guidance generally includes:

- Delegations of authority.
- Assignments of responsibility.
- Work-flow procedures.
- Internal reporting requirements.

Be aware that internal agency guidance must not conflict with the FAR.

#### **3.3.1 Sources of the FAR**

The FAR was created to provide a single, uniform acquisition regulation to all executive agencies. It became effective on April 1, 1984. Basically, the FAR was the result of a merger of the two major procurement regulations: the Defense Acquisition Regulation and the Federal Procurement Regulation, see Exhibit 3-8.

In addition, the FAR incorporated some of the material contained in NASA procurement regulations and the procurement regulations of other executive agencies.

The material in the FAR, therefore, is based on:

- Statutes.
- Executive Orders (EOs).
- OMB Circulars.
- OFPP Policy Letters.
- Previously existing regulations (especially the DAR and FPR).

- Decisions by the Comptroller General (head of the General Accounting Office), decisions by Boards of Contract Appeals (BCA), the Courts, and case and common law.

<b>THE TWO MAJOR REGULATIONS SUPERCEDED BY THE FAR</b>	
The Defense Acquisition Regulation (DAR)	<ul style="list-style-type: none"> <li>• Issued by the Department of Defense under 10 U.S.C. (United States Code, Title 10)</li> <li>• Passages not incorporated in the FAR served as the basis for the present Department of Defense FAR Supplement.</li> </ul>
The Federal Procurement Regulation (FPR)	<ul style="list-style-type: none"> <li>• Issued by the General Services Administration under 41 U.S.C. (United States Code, Title 41)</li> <li>• Superseded by the FAR in its entirety.</li> </ul>

*Exhibit 3-8. The Two Major Regulations Superseded by the FAR*

### 3.3.2 FAR Maintenance

The FAR is maintained by two separate groups or councils under the overall leadership of the Federal Acquisition Regulatory Council (see Exhibit 3-9).

<b>THE TWO COUNCILS RESPONSIBLE FOR MAINTAINING THE FAR</b>	
The Defense Acquisition Regulatory Council (DARC)	The Office of the Secretary of Defense chairs the DARC, which includes representatives from the Departments of the Air Force, Army, and Navy and also from the Defense Logistics Agency and the National Aeronautics and Space Administration.
The Civilian Agency Acquisition Council (CAAC)	GSA chairs the CAAC, which has representatives from 21 civilian agencies.

*Exhibit 3-9. The Two Councils Responsible for Maintaining the FAR*

The two councils listed in Exhibit 3-9 are responsible for maintaining the FAR. Each council is assigned primary responsibility for prescribed parts and subparts of the FAR. When one council develops a proposed amendment to the FAR, the amendment is referred to the other council for review and concurrence.

## BASIC STATUTES AND REGULATIONS

The FAR Secretariat, which was established within GSA, provides administrative support. The Secretariat prints, publishes, and distributes the FAR. The Secretariat also provides the two councils with centralized services for:

- Issuing Federal Register notices of proposed and final FAR rules.
- Preparing and issuing Federal Acquisition Circulars, which contain replacements for amended FAR pages.
- Maintaining a synopsis of current FAR revisions and their status.
- Assigning FAR case numbers.
- Maintaining official files.
- Providing miscellaneous administrative support.

FAR cases are numbered consecutively, with the appropriate calendar year (CY) as a prefix. For example: The first case initiated in CY 1990 is Case 90-01.

When a FAR case has been completed and a proposed change approved for publication, the change is issued as a Federal Acquisition Circular (FAC). Note that there is not a one-to-one correlation between FAR cases and FACs. Some FAR cases are never incorporated in FACs. Several cases may be combined in a single FAC.

FACs are numbered consecutively as issued and are keyed to the fiscal year edition of the FAR. When the original (1984) edition of the FAR was in use, the FACs were numbered 84-XX (e.g., FAC 84-49). The FACs issued under the second (1990) edition of the FAR likewise are numbered 90-XX (e.g., FAC 90-1). FACs to the 1997 edition will be numbered 97-XX.

Prior to issuance, the FACs are reviewed by the Administrator of the Office of Federal Procurement Policy and are jointly “signed” by the Secretary of Defense and the Administrators of GSA and NASA or their delegates.

FACs are distributed for insertion into the loose-leaf edition of the FAR. In addition, a bound version of the FAR, which is published in the Code of Federal Regulations format at least once each calendar year, incorporates all circulars to that time. In addition, the FAR Secretariat posts FACs on a World Wide Web page maintained by GSA, along with a complete on-line version of the FAR that is revised as each FAC is released.

### 3.3.3 FAR Supplements

The FAR is the basic regulation. It is essentially a statement of policy, but also includes some procedural detail. The FAR permits agencies to issue supplementing regulations because agencies are organized differently and may have unique acquisition needs. But an agency's supplemental regulations should not:

- Unnecessarily repeat, paraphrase, or otherwise restate FAR material.
- Conflict with or be inconsistent with the FAR (except as required by law or when a deviation is authorized).

Agency acquisition regulations are limited to:

- Those necessary to implement FAR policies and procedures within the agency.
- Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the specific needs of the agency.

### 3.3.4 Using the FAR System

When making procurement decisions, you must heed all of the following:

- The FAR.
- Your agency's supplement to the FAR.
- Internal guidance.

#### Using the FAR

The FAR System is in Title 48, Code of Federal Regulations (CFR). The FAR is assigned Chapter 1. Chapter 1 is divided into subchapters and parts as shown in Exhibit 3-10, and is printed in two volumes.

The subchapters shown in Exhibit 3-10 provide organization to the FAR. For practical use, you should be aware that each FAR part is divided as illustrated in Exhibit 3-11.

By using the Table of Contents in Chapter 1 of the FAR, you can locate the subject you are interested in. For example, suppose you are interested in knowing the FAR requirements for competition. The Chapter 1 Table of Contents shows that Part 6 is titled "Competition Requirements." When you locate Part 6, you will find a table of contents for that Part.



## BASIC STATUTES AND REGULATIONS

There you will find that Part 6 is divided into five subparts, which are divided into sections and subsections.

With practice, you will find that locating specific subject matter is relatively easy. You may also use the index in the FAR to help you locate subject matter; however, the internal relationships that exist between the various parts necessitate the frequent use of cross-references. The arrangement of FAR material is described in detail in Subsection 1.105-2 (i.e., Part 1, Subpart 1, Section 5, Subsection 2).

<b>FAR ORGANIZATION</b>	
Parts 1 - 4	Subchapter A — General
Parts 5 - 12	Subchapter B — Competition and Acquisition Planning
Parts 13 - 18	Subchapter C — Contracting Methods and Contract Types
Parts 19 - 26	Subchapter D — Socioeconomic Programs
Parts 27 - 33	Subchapter E — General Contracting Requirements
Parts 34 - 41	Subchapter F — Special Categories of Contracting
Parts 42 - 51	Subchapter G — Contract Management
Parts 52 - 53	Subchapter H — Clauses and Forms
Parts 54 - 99	Reserved

*Exhibit 3-10. FAR Organization*

<b>EXAMPLE OF HOW THE FAR IS DIVIDED</b>		
<i>FAR Divisions</i>	<i>FAR #</i>	<i>Example</i>
Part	14	Sealed Bidding
Subpart	14.1	Use of Sealed Bidding
Section	14.103	Policy
Subsection	14.103-1	General

*Exhibit 3-11. Example of How the FAR is Divided*

#### Using FAR Supplements

Chapters 2 through 59 of Title 48 of the CFR are reserved for the acquisition regulations of the executive agencies. Some examples are:

DoD Chapter 2.  
HHS Chapter 3.  
GSA Chapter 5.  
NASA Chapter 18.

Using the GSA as an example, GSAR (General Services Administration Acquisition Regulation) supplements to the FAR are preceded by a 5. For example, FAR 6.304(a)(1) states that “For a proposed contract not exceeding \$500,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.” If GSA elects to requires approval at a level above the CO, it is up to GSA to identify that level. In the GSAR, such coverage would be at 506.304.

If an agency needs to supplement the FAR, and there is no counterpart in the FAR, the agency will identify such material by the numbers “70” and up. For example, if the GSAR added something unique to FAR Subpart 6.3, it would be numbered in the GSAR as 506.370 (the second addition at the location would be 506.371). A whole subpart added to FAR Part 6 would be numbered 506.70.